

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NICOLE OLIBAS, KELLIE BARTON, §  
REGINALD WILLIAMS, DONNY §  
HODKINSON, TINA MCDONALD and §  
CAROL JOHNSON, §

Plaintiffs, §

v. §

JOHN BARCLAY AND NATIVE §  
OILFIELD SERVICES, LLC, §

Defendants. §

REGINALD E. WILLIAMS, DONNY J. §  
HODKINSON, TINA MCDONALD and §  
CAROL JOHNSON on behalf of §  
themselves and all others similarly §  
situated, §

Plaintiffs, §

v. §

NATIVE OILFIELD SERVICES, LLC, §  
JOHN BARCLAY and WILL SCHMID, §

Defendants. §

Civil Action No. 3:11-cv-02388-B

Civil Action No. 3:11-cv-02388-B

**DEFENDANTS' PROPOSED INSTRUCTIONS ON REPRESENTATIVE  
TESTIMONY AND PROPOSED QUESTIONS ON LIABILITY**

Defendants, Native Oilfield Services, LLC and John Barclay, pursuant to the  
Court's verbal direction on July 30, 2014, files the proposed jury instructions on

representative testimony and the proposed jury instructions on liability, attached hereto as Exhibit A.

Respectfully submitted,

/s/ David M. O'Dens

David M. O'Dens  
Texas Bar I.D. 15198100  
*odens@settlepou.com*

Jared T.S. Pace  
Texas Bar I.D. 24079098  
*jp pace@settlepou.com*

SettlePou  
3333 Lee Parkway, Eighth Floor  
Dallas, Texas 75219  
(214) 520-3300  
(214) 526-4145 (Facsimile)

ATTORNEYS FOR DEFENDANTS

### **Certificate of Service**

This certifies that this document was served in accordance with the Federal Rules of Civil Procedure on July 31, 2014.

/s/ David M. O'Dens

David M. O'Dens

**EXHIBIT A**

**JURY INSTRUCTIONS**

**Representative Testimony**

The Driver Plaintiffs have filed this overtime pay lawsuit as a collective action, which is similar to a class action. In a collective action, it is not necessary that all of the Plaintiffs testify in order to prove violations or damages. Rather, the Plaintiffs may rely on representative testimony.

The Plaintiffs have put on testimony alleged to be representative of all of the Driver Plaintiffs in this case, to establish a pattern or practice of violations and damages. In determining whether evidence of testifying Plaintiffs is fairly representative, you should decide whether their experiences also happened to non-testifying Plaintiffs.

You may consider such factors as the nature of the work involved, the working conditions, the relationships between employees and managers, and the detail and credibility of the testimony and whether such testimony is generally consistent. While no exact number or percentage of the Plaintiffs is required to testify, the Plaintiffs must present a sufficient number of representatives, which, when considered together with all of the other evidence presented in the case, establishes a pattern or practice of overtime violations and damages.

**Authority: Jury Charges submitted in *Roussell v. Brinker Int'l, Inc.*, No. H-05-3733 (S.D. Tex. March 23, 2009); *Solis v. Tyson Foods, Inc.*, No. 2:02-CV-1174-VEH (N.D. Ala. Oct. 14, 2009).**

**JURY QUESTIONS**

**On Liability**

1. Do you find that Dispatcher Plaintiffs established by a preponderance of the evidence that Defendants violated the Fair Labor Standards Act by failing to pay Dispatcher Plaintiffs overtime pay required by law?

Answer “yes” or “no.”

Nicole Olibas \_\_\_\_\_

Reginald Williams \_\_\_\_\_

Donny Hodkinson \_\_\_\_\_

Tina McDonald \_\_\_\_\_

Carol Johnson \_\_\_\_\_

2. Do you find by a preponderance of the evidence that the Driver Plaintiffs who testified during trial are fairly representative of the Driver Plaintiffs who did not testify?

\_\_\_\_\_

If you answered “No” to Question No. 2, then skip Question No. 3 and proceed directly to Question No. 4.

3. Do you find by a preponderance of the evidence that the Defendants violated the Fair Labor Standards Act by failing to pay the Driver Plaintiffs overtime pay required by law?

\_\_\_\_\_

4. Do you find by a preponderance of the evidence that the Defendants violated the Fair Labor Standards Act by failing to pay the following Driver Plaintiffs overtime pay required by law?

Answer “yes” or “no.”

Reginald Williams \_\_\_\_\_

Donny Hodkinson \_\_\_\_\_

Tina McDonald \_\_\_\_\_

Carol Johnson \_\_\_\_\_

Chris Gonzales \_\_\_\_\_

David Zamarrippa \_\_\_\_\_